

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANTONIO GRAHAM,

Petitioner,

v.

No. CV 14-0524 WJ/KBM

TIMOTHY HATCH, WARDEN,

Respondent.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

This matter is before the Court, *sua sponte* under rules 4 and 11 of the Rules Governing Section 2254 Cases, on Petitioner's Petition for Writ of Habeas Corpus. Also before the Court is Petitioner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (Doc. 4). The Court will grant the motion and dismiss the petition for lack of jurisdiction as a second or successive petition.

In two previous § 2254 proceedings, *Graham v. Hatch*, No. CV 06-0602 JH/DJS, and *Graham v. Hatch*, No. CV 11-0304 LH/GBW, Petitioner attacked the same state court criminal conviction that is the subject of this proceeding. See *Duhart v. Carlson*, 469 F.2d 471, 473 (10th Cir. 1972) (noting that court may take judicial notice of its own records). The Court dismissed the petition in case No. CV 06-0602 JH/DJS with prejudice, and the Court of Appeals for the Tenth Circuit denied a certificate of appealability, dismissed his appeal, and later denied Petitioner authorization to file a second or successive petition. This Court dismissed the subsequent petition in No. CV 11-0304 LH/GBW for lack of jurisdiction as second or successive. Petitioner now brings a new § 2254 petition, again asserting that the state court illegally enhanced his sentence based on New Mexico's habitual offender statute.


"When a second or successive § 2254 or § 2255 claim is filed in the district court without

the required authorization from this court, the district court may transfer the matter to [the court of appeals] if it determines it is in the interest of justice to do so under [28 U.S.C.] § 1631, or it may dismiss the motion or petition for lack of jurisdiction.” *In re Cline*, 531 F.3d 1249, 1252 (10th Cir. 2008). The current petition is Petitioner’s third and is not accompanied by an authorizing order. The Court of Appeals for the Tenth Circuit has previously denied authorization, and, therefore, according to the factors noted in *Cline*, 531 F.3d at 1251, this Court will dismiss Petitioner’s petition for lack of jurisdiction.

Furthermore, under rule 11 of the Rules Governing Section 2254 Cases, the Court *sua sponte* determines that Petitioner has failed to make a substantial showing that he has been denied a constitutional right. The Court will therefore deny a certificate of appealability. The Court also notifies Petitioner that filing of further habeas corpus pleadings attacking the same conviction or sentence may result in imposition of filing restrictions.

IT IS THEREFORE ORDERED that Petitioner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (Doc. 4) is GRANTED;

IT IS FURTHER ORDERED that Petitioner’s Petition for Writ of Habeas Corpus is DISMISSED for lack of jurisdiction, a certificate of appealability is DENIED, and judgment will be entered.


UNITED STATES DISTRICT JUDGE